

Federal Energy Regulatory Commission

§ 380.15

(3) Construction may proceed.

(d) *Procedures for formal consultation.*

(1) In the event that formal consultation is required pursuant to paragraphs (b)(5)(v) or (c)(2) of this section, the Commission staff will initiate formal consultation with the FWS and/or NMFS, as appropriate, and will request that the consulted agency designate a lead Regional Office, lead Field/District Office, and Project Manager, as necessary, to facilitate the formal consultation process. In addition, the Commission will designate a contact for formal consultation purposes.

(2) During formal consultation, the consulted agency, the Commission, and the project sponsor will coordinate and consult to determine potential impacts and mitigation which can be implemented to minimize impacts. The Commission and the consulted agency will schedule coordination meetings and/or field visits as necessary.

(3) The formal consultation period will last no longer than 90 days, unless the consulted agency, the Commission, and project sponsor mutually agree to an extension of this time period.

(4) The consulted agency will provide the Commission with a Biological Opinion on the proposed project, as specified in 50 CFR 402.14(e), within 45 days of the completion of formal consultation.

[Order 603, 64 FR 26617, May 14, 1999]

§ 380.14 Compliance with the National Historic Preservation Act.

(a) Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470(f)) (NHPA), requires the Commission take into account the effect of a proposed project on any historic property and to afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on projects if required under 36 CFR 800. The project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at § 380.12(f). The project sponsor may contact the Commission at any time for assistance. The Commission will review the resultant filings.

(1) The Commission's NHPA section 106 responsibilities apply to public and private lands, unless subject to the provisions of paragraph (a)(2) of this section. The project sponsor will assist the Commission in taking into account the views of interested parties, Native Americans, and tribal leaders.

(2) If Federal or Tribal land is affected by a proposed project, the project sponsor shall adhere to any requirements for cultural resources studies of the applicable Federal land-managing agencies on Federal lands and any tribal requirements on Tribal lands. The project sponsor must identify, in Resource Report 4 filed with the application, the status of cultural resources studies on Federal or Tribal lands, as applicable.

(3) The project sponsor must consult with the SHPO(s) and THPOs, if appropriate. If the SHPO or THPO declines to consult with the project sponsor, the project sponsor shall not continue with consultations, except as instructed by the Director of the Office of Pipeline Regulation.

(4) If the project is covered by an agreement document among the Commission, Council, SHPO(s), THPO(s), land-managing agencies, project sponsors, and interested persons, as appropriate, then that agreement will provide for compliance with NHPA section 106, as applicable.

(b) [Reserved]

[Order 603, 64 FR 26618, May 14, 1999]

§ 380.15 Siting and maintenance requirements.

(a) *Avoidance or minimization of effects.* The siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.

(b) *Landowner consideration.* The desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property, so long as the result is consistent with applicable requirements of law, including laws relating to land-use and any requirements imposed by the Commission.

(c) *Safety regulations.* The requirements of this paragraph do not affect a

project sponsor's obligation to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices.

(d) *Pipeline construction.* (1) The use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.

(2) In locating proposed facilities, the project sponsor shall, to the extent practicable, avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands. If rights-of-way must be routed near or through such places, attempts should be made to minimize visibility from areas of public view and to preserve the character and existing environment of the area.

(3) Rights-of-way should avoid forested areas and steep slopes where practical.

(4) Rights-of-way clearing should be kept to the minimum width necessary.

(5) In selecting a method to clear rights-of-way, soil stability and protection of natural vegetation and adjacent resources should be taken into account.

(6) Trees and vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay.

(7) Remaining trees and shrubs should not be unnecessarily damaged.

(8) Long foreground views of cleared rights-of-way through wooded areas that are visible from areas of public view should be avoided.

(9) Where practical, rights-of-way should avoid crossing hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible in the foreground from areas of public view.

(10) Screen plantings should be employed where rights-of-way enter forested areas from a clearing and where the clearing is plainly visible in the foreground from areas of public view.

(11) Temporary roads should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the road area should be restored and stabilized without undue delay.

(e) *Right-of-way maintenance.* (1) Vegetation covers established on a right-of-way should be properly maintained.

(2) Access and service roads should be maintained with proper cover, water bars, and the proper slope to minimize soil erosion. They should be jointly used with other utilities and land-management agencies where practical.

(3) Chemical control of vegetation should not be used unless authorized by the landowner or land-managing agency. When chemicals are used for control of vegetation, they should be approved by EPA for such use and used in conformance with all applicable regulations.

(f) *Construction of aboveground facilities.* (1) Unobtrusive sites should be selected for the location of aboveground facilities.

(2) Aboveground facilities should cover the minimum area practicable.

(3) Noise potential should be considered in locating compressor stations, or other aboveground facilities.

(4) The exterior of aboveground facilities should be harmonious with the surroundings and other buildings in the area.

(5) The site of aboveground facilities which are visible from nearby residences or public areas, should be planted in trees and shrubs, or other appropriate landscaping and should be installed to enhance the appearance of the facilities, consistent with operating needs.

[Order 603, 64 FR 26619, May 14, 1999]

APPENDIX A TO PART 380—MINIMUM FILING REQUIREMENTS FOR ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT

ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT.

Resource Report 1—General Project Description

1. Provide a detailed description and location map of the project facilities. (§ 380.12(c)(1)).

2. Describe any nonjurisdictional facilities that would be built in association with the project. (§ 380.12(c)(2)).

3. Provide current original U.S. Geological Survey (USGS) 7.5-minute-series topographic maps with mileposts showing the project facilities; (§ 380.12(c)(3)).

4. Provide aerial images or photographs or alignment sheets based on these sources with mileposts showing the project facilities; (§ 380.12(c)(3)).

5. Provide plot/site plans of compressor stations showing the location of the nearest noise-sensitive areas (NSA) within 1 mile. (§ 380.12(c)(3,4)).

6. Describe construction and restoration methods. (§ 380.12(c)(6)).

7. Identify the permits required for construction across surface waters. (§ 380.12(c)(9)).

8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in § 157.6(d). (§ 380.12(c)(10))

Resource Report 2—Water Use and Quality

1. Identify all perennial surface waterbodies crossed by the proposed project and their water quality classification. (§ 380.12(d)(1)).

2. Identify all waterbody crossings that may have contaminated waters or sediments. (§ 380.12(d)(1)).

3. Identify watershed areas, designated surface water protection areas, and sensitive waterbodies crossed by the proposed project. (§ 380.12(d)(1)).

4. Provide a table (based on NWI maps if delineations have not been done) identifying all wetlands, by milepost and length, crossed by the project (including abandoned pipeline), and the total acreage and acreage of each wetland type that would be affected by construction. (§ 380.12(d)(1 & 4)).

5. Discuss construction and restoration methods proposed for crossing wetlands, and compare them to staff's Wetland and Waterbody Construction and Mitigation Procedures; (§ 380.12(d)(2)).

6. Describe the proposed waterbody construction, impact mitigation, and restoration methods to be used to cross surface waters and compare to the staff's Wetland and Waterbody Construction and Mitigation Procedures. (§ 380.12(d)(2)).

7. Provide original National Wetlands Inventory (NWI) maps or the appropriate state wetland maps, if NWI maps are not available, that show all proposed facilities and include milepost locations for proposed pipeline routes. (§ 380.12(d)(4)).

8. Identify all U.S. Environmental Protection Agency (EPA)- or state- designated aquifers crossed. (§ 380.12(d)(9)).

Resource Report 3—Vegetation and Wildlife

1. Classify the fishery type of each surface waterbody that would be crossed, including fisheries of special concern. (§ 380.12(e)(1)).

2. Describe terrestrial and wetland wildlife and habitats that would be affected by the project. (§ 380.12(e)(2)).

3. Describe the major vegetative cover types that would be crossed and provide the acreage of each vegetative cover type that would be affected by construction. (§ 380.12(e)(3)).

4. Describe the effects of construction and operation procedures on the fishery resources and proposed mitigation measures. (§ 380.12(e)(4)).

5. Evaluate the potential for short-term, long-term, and permanent impact on the wildlife resources and state-listed endangered or threatened species caused by construction and operation of the project and proposed mitigation measures. (§ 380.12(e)(4)).

6. Identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project and discuss the results of the consultations with other agencies. Include survey reports as specified in § 380.12(e)(5).

7. Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments. (§ 380.12(e)(6))

8. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§§ 380.12(e)(4 & 7))

Resource Report 4—Cultural Resources

See § 380.14 and "OPR's Guidelines for Reporting on Cultural Resources Investigations" for further guidance.

1. Initial cultural resources consultation and documentation, and documentation of consultation with Native Americans. (§ 380.12(f)(1)(i) & (2)).

2. Overview/Survey Report(s). (§ 380.12(f)(1)(ii) & (2)).

Resource Report 5—Socioeconomics

1. For major aboveground facilities and major pipeline projects that require an EIS, describe existing socioeconomic conditions within the project area. (§ 380.12(g)(1)).

2. For major aboveground facilities, quantify impact on employment, housing, local government services, local tax revenues, transportation, and other relevant factors within the project area. (§ 380.12(g)(2-6)).

Resource Report 6—Geological Resources

1. Identify the location (by milepost) of mineral resources and any planned or active surface mines crossed by the proposed facilities. (§ 380.12(h)(1 & 2)).

2. Identify any geologic hazards to the proposed facilities. (§ 380.12(h)(2))

3. Discuss the need for and locations where blasting may be necessary in order to construct the proposed facilities. (§ 380.12(h)(3))

4. For LNG projects in seismic areas, the materials required by "Data Requirements

for the Seismic Review of LNG Facilities,” NBSIR84–2833. (§380.12(h)(5))

5. For underground storage facilities, how drilling activity by others within or adjacent to the facilities would be monitored, and how old wells would be located and monitored within the facility boundaries. (§380.12(h)(6))

Resource Report 7—Soils

1. Identify, describe, and group by milepost the soils affected by the proposed pipeline and aboveground facilities. (§380.12(i)(1))

2. For aboveground facilities that would occupy sites over 5 acres, determine the acreage of prime farmland soils that would be affected by construction and operation. (§380.12(i)(2))

3. Describe, by milepost, potential impacts on soils. (§380.12(i)(3,4))

4. Identify proposed mitigation to minimize impact on soils, and compare with the staff’s Upland Erosion Control, Revegetation, and Maintenance Plan. (§380.12(i)(5))

Resource Report 8—Land Use, Recreation and Aesthetics

1. Classify and quantify land use affected by: (§380.12(j)(1))

a. Pipeline construction and permanent rights-of-way (§380.12(j)(1));

b. Extra work/staging areas (§380.12(j)(1));

c. Access roads (§380.12(j)(1));

d. Pipe and contractor yards (§380.12(j)(1)); and

e. Aboveground facilities (§380.12(j)(1)).

2. Identify by milepost all locations where the pipeline right-of-way would at least partially coincide with existing right-of-way, where it would be adjacent to existing rights-of-way, and where it would be outside of existing right-of-way. (§380.12(j)(1))

3. Provide detailed typical construction right-of-way cross-section diagrams showing information such as widths and relative locations of existing rights-of-way, new permanent right-of-way, and temporary construction right-of-way. (§380.12(j)(1))

4. Summarize the total acreage of land affected by construction and operation of the project. (§380.12(j)(1))

5. Identify by milepost all planned residential or commercial/business development and the time frame for construction. (§380.12(j)(3))

6. Identify by milepost special land uses (e.g., sugar maple stands, specialty crops, natural areas, national and state forests, conservation land, etc.). (§380.12(j)(4))

7. Identify by beginning milepost and length of crossing all land administered by Federal, state, or local agencies, or private conservation organizations. (§380.12(j)(4))

8. Identify by milepost all natural, recreational, or scenic areas, and all registered natural landmarks crossed by the project. (§380.12(j)(4 & 6))

9. Identify all facilities that would be within designated coastal zone management areas. Provide a consistency determination or evidence that a request for a consistency determination has been filed with the appropriate state agency. (§380.12(j)(4 & 7))

10. Identify by milepost all residences that would be within 50 feet of the construction right-of-way or extra work area. (§380.12(j)(5))

11. Identify all designated or proposed candidate National or State Wild and Scenic Rivers crossed by the project. (§380.12(j)(6))

12. Describe any measures to visually screen aboveground facilities, such as compressor stations. (§380.12(j)(11))

13. Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-managing agencies with jurisdiction over land that would be affected by the project. (§380.12(j)(12))

Resource Report 9—Air and Noise Quality

1. Describe existing air quality in the vicinity of the project. (§380.12(k)(1))

2. Quantify the existing noise levels (day-night sound level (L_{dn}) and other applicable noise parameters) at noise-sensitive areas and at other areas covered by relevant state and local noise ordinances. (§380.12(k)(2))

3. Quantify existing and proposed emissions of compressor equipment, plus construction emissions, including nitrogen oxides (NO_x) and carbon monoxide (CO), and the basis for these calculations. Summarize anticipated air quality impacts for the project. (§380.12(k)(3))

4. Describe the existing compressor units at each station where new, additional, or modified compressor units are proposed, including the manufacturer, model number, and horsepower of the compressor units. For proposed new, additional, or modified compressor units include the horsepower, type, and energy source. (§380.12(k)(4))

5. Identify any nearby noise-sensitive area by distance and direction from the proposed compressor unit building/enclosure. (§380.12(k)(4))

6. Identify any applicable state or local noise regulations. (§380.12(k)(4))

7. Calculate the noise impact at noise-sensitive areas of the proposed compressor unit modifications or additions, specifying how the impact was calculated, including manufacturer’s data and proposed noise control equipment. (§380.12(k)(4))

Resource Report 10—Alternatives

1. Address the “no action” alternative. (§380.12(l)(1))

2. For large projects, address the effect of energy conservation or energy alternatives to the project. (§380.12(l)(1))

3. Identify system alternatives considered during the identification of the project and provide the rationale for rejecting each alternative. (§380.12(l)(1))

4. Identify major and minor route alternatives considered to avoid impact on sensitive environmental areas (e.g., wetlands, parks, or residences) and provide sufficient comparative data to justify the selection of the proposed route. (§380.12(l)(2)(ii))

5. Identify alternative sites considered for the location of major new aboveground facilities and provide sufficient comparative data to justify the selection of the proposed site. (§380.12(l)(2)(ii))

Resource Report 11—Reliability and Safety

Describe how the project facilities would be designed, constructed, operated, and maintained to minimize potential hazard to the public from the failure of project components as a result of accidents or natural catastrophes. (§380.12(m))

Resource Report 12—PCB Contamination

1. For projects involving the replacement or abandonment of facilities determined to have PCBs, provide a statement that activities would comply with an approved EPA disposal permit or with the requirements of the TSCA. (§380.12(n)(1))

2. For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date. (§380.12(n)(2))

Resource Report 13—Additional Information Related to LNG Plants

Provide all the listed detailed engineering materials. (§380.12(o))

[Order 603, 64 FR 26619, May 14, 1999, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999; Order 609, 64 FR 57392, Oct. 25, 1999; Order 609-A, 65 FR 15238, Mar. 22, 2000]

EFFECTIVE DATE NOTE: By Order 609-A, 65 FR 15238, Mar. 22, 2000, in appendix A to part 380 the reference to “(§380.12 (a)(4) and (c)(10))” in paragraph number 8 under Resource Report 1—General Project Description is revised to read “(§380.12(c)(10))”; the reference to “(§380.12 (f)(1)(ii) & (2))” in paragraph number 1 under Resource Report 4—Cultural Resources is revised to read “(§380.12 (f)(1)(i) & (2))”; the reference to “(§380.12 (f)(1)(iii) & (2))” in paragraph number 2 under Resource Report 4 is revised to read “(§380.12 (f)(1)(ii) & (2))”; and the reference to “(§380.12 (l)(3))” in paragraphs number 4 and 5 under Resource Report 10—Alternatives is revised to read “(§380.12 (l)(2)(ii))”, effective Apr. 21, 2000.

PART 381—FEES

Subpart A—General Provisions

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Subpart F [Reserved]

Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

Subpart H—Fees Applicable to the Public Utility Holding Company Act of 1935

- 381.801 Applications for exempt wholesale generator status.

AUTHORITY: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.